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Hearing Date: February 4, 2019 at 10:00 a.m.

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Attorneys for Seven Springs Limited Partnership

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
In re	Chapter 11
	:
SEARS HOLDINGS CORPORATION	:
<i>et al.,</i>	:
	:
Debtors¹	(Jointly Administered)
	Related to Docket No: 1731, 1774
-----X	

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

SEVEN SPRINGS LIMITED PARTNERSHIP'S OBJECTION TO
DEBTOR'S CURE NOTICE

Seven Springs Limited Partnership, landlord, creditor, and party-in-interest in the above-captioned jointly-administered bankruptcy cases ("Seven Springs"), hereby submits its limited objection (the "Objection") to Debtors' *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1731].

Jurisdiction

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 §§ 1408 and 1409.

2. On October 15, 2018 ("Petition Date"), Sears Holdings Corporation and several of its affiliates, including Kmart Corporation, filed voluntary petitions under Chapter 11 of the Bankruptcy Code.

3. Upon information and belief, the Debtors are operating their business and managing their properties as debtors-in-possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code.

4. Prior to the Petition Date, Seven Springs entered into that certain Lease dated January 23, 1976, as amended, with Debtor Kmart Corporation (the "Lease") for the occupation and use of certain real property premises location in S. Lake Tahoe, California, known as Kmart #9153 (the "Premises").

5. The Lease is a lease "of real property in a shopping center" as that term is used in Section 365(b)(3). See *In re Joshua Slocum LTD*, 922 F.2d 1081 (3d. Cir. 1990).

6. On November 1, 2018, Debtors filed their *Motion for Approval of Global Bidding Procedures* [Docket No. 429].

7. On November 19, 2018, the Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* (the “Global Bidding Procedures Order”) [Docket No. 816] (the “Bidding Procedures Order”).

8. On January 18, 2019, Debtors filed their *Notice of Successful Bidder and Sale Hearing* [Docket No. 1730] naming the Buyer the winning bidder for the Global Assets (as defined in the *Bidding Procedures Order*) (the “Proposed Global Asset Sale”).

9. The Proposed Global Asset Sale contemplates possible assumption and assignment of the Lease.

10. On January 18, 2019, Debtors filed their *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1731] (the “First Cure Notice”).

11. On January 24, 2018, Debtors filed their *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1774] (the “Supplemental Cure Notice,” and together with the First Cure Notice, the “Cure Notice”).

12. Debtors unstated the cure amount for the Lease in the Cure Notice.

CURE CLAIM OBJECTION

13. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

14. Section 365(b)(1) includes compensation to landlords for sums incurred for attorneys' fees and expenses. The Lease provides for recovery of attorneys' fees and expenses. Seven Springs hereby objects to assumption of the Lease listed in the Cure Notice absent payment of Seven Springs' attorneys' fees and expenses.

15. As of the date of this Objection, Seven Springs objects to the cure amounts proposed for the Lease that appears in the Cure Notice. Seven Springs herein reserves the right to file a supplementary cure objection regarding the Lease.

TABLE 1:

Debtor Store Number	Property Location	Debtor Proposed Cure Amounts	Lease Cure Amount²	Attorneys' Fees	Total Cure Amount
#9513	S. Lake Tahoe, CA	\$47,533.00	\$61,081.91	\$750.00	\$61,831.91

16. Seven Springs further objects to the assumption of the Leases absent payment of all cure amounts owed thereunder through the effective date of assumption, including any amounts that will become due or be invoiced on or after January 24, 2019 (including, but not limited to, additional amounts, not yet known, that accrued following January 24, 2019, such as

² The cure amounts specified in this chart do not reflect any amounts that will become due or be invoiced on or after the date of this Objection, or attorneys' fees and costs, and Seven Springs reserves all of its rights with respect thereto. Seven Springs further avers that additional amounts, not yet known, may be due with regard to calendar year 2018 or 2019, such as year-end adjustments to various items including, but not limited to, real estate taxes, common area maintenance, percentage rent and insurance. Seven Springs further reserves all rights with respect thereto.

year-end adjustments to various items including, but not limited to, real estate taxes, common area maintenance, percentage rent and insurance), as well as attorneys' fees and costs.

JOINDER

17. In addition to the foregoing, Seven Springs further joins in the objections filed by Debtors' other landlords to the extent that such objections are not inconsistent with the relief requested in this Objection.

RESERVATION OF RIGHTS

18. Seven Springs hereby reserves its rights to make such other and further objections as may be appropriate, including, but not limited to, objections regarding adequate assurance of future performance under Section 365.

CONCLUSION

19. For the reasons set forth above, Seven Springs respectfully requests that this Court (i) sustain this Objection; (ii) require that any order authorizing the assumption of the Lease affirmatively require Debtors to pay all amounts accrued but not yet billed following January 24, 2019, including attorneys' fees and expenses; and (iii) grant Seven Springs such further relief as it deems proper.

Dated: January 25, 2019

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Respectfully Submitted,

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/s/ Caleb T. Holzaepfel

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Attorneys for Seven Springs Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2019, I caused a copy of the foregoing to be served by electronic means through the ECF system to all registered ECF participants on the creditor matrix (attached as **Exhibit A** hereto) as well as by e-mail on the following parties:

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And Via First Class Mail to:

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